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SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

MAY 22 5 13 PM '97

SQUARE 37 PARTNERS, \*

PETITIONER, \*

v. \* Tax Docket No. 3645-85

DISTRICT OF COLUMBIA, \*

RESPONDENT. \*

ORDER

This matter came before the Court on the parties Cross Motions for Summary Judgment. Petitioner, Square 37 Partners, challenges real estate taxes levied against the subject property for Tax Year 1985 assessed by respondent as "Correct Allocation." Respondent contends the assessment appealed was lawfully made and should therefore be sustained.

The Court has jurisdiction to hear this appeal pursuant to D.C. Code §§ 11-1201 and 47-829(a). Based on the arguments of counsel at the hearing and the pleadings filed, the Court makes the following:

FINDINGS OF FACT

1. Petitioner Square 37 Partners, 23rd and M Street Associates Ltd., general partner, of which Joseph W. Kaempfer is a general partner, is a limited partnership organized and existing under the laws of the District of Columbia with a principal place of business at 2350 M Street, N.W. in the District of Columbia.

2. The Respondent District of Columbia is a municipal corporation, created by the United States Congress, Section 1-101 of the District of Columbia Code.

3. At all times relevant hereto, Petitioner was the owner of record of the real estate in the District of Columbia known as Lot 854 in Square 37 (the subject

property), improved by premises 2350 M Street, N.W., and the improvements thereon and is obligated to pay all real estate taxes assessed against the subject property.

4. Petitioner purchased the subject property in January of 1982 and at the same time purchased Lots 832, 840, 844, 845, 846 and 847 in Square 37. These lots were subsequently subdivided (subdivision 174/65) together with Lots 851 and 852 in Square 37 into Lot 55 and Lots 853 and 854 on April 13, 1983.

5. On February 27, 1984, the District issued a notice of proposed assessment against Lot 854 in Square 37 for Tax Year 1985 in the amount of \$3,577.420 for the land, with no improvement valuation, thus treating the land as vacant. This proposed assessment was based on the erroneous assumption that one building was being constructed on both Lots 853 and 854. Lot 854 was treated as a false vacancy as a building cannot be divided into separate entities for assessment purposes. Thus, the building was treated as located on Lot 853 and Lot 854 was treated as vacant. Accordingly, Lot 853 was assessed as having an improvement value of \$25,229,200 while Lot 854 was assigned no improvement value.

6. By separate cost schedules dated June 20, 1984, Petitioner, through its agent John Nicolosi, informed the District there were two separate buildings on Lots 853 and 854, an office building and the Regent Hotel, respectively.

7. Based on the information contained in the cost schedules submitted by Petitioner, the District proceeded by the challenged notice to allocate the improvement value between Lots 853 and 854. It did this by adding to the improvement value on Lot 854, the amount properly attributable to the permit work which transpired between

January 1 and June 30, 1984. Accordingly, the improvement assessment against Lot 853 was reduced by \$13,569,290 from \$25,229,200 to \$11,659,910 and an improvement assessment of \$29,317.980 was made against Lot 854.

8. On July 27, 1984, petitioner was notified by the Department of Finance and Revenue of the proposed improvement assessment in the amount of \$29,317,980 for Lot 854 and the continuing proposed land assessment in the amount of \$3,577.420. Petitioner appealed the notice of proposed assessment to the Board of Equalization and Review on October 1, 1984. The Board of Equalization and Review affirmed the assessment.

9. The hotel was not completed until the end of calendar year 1984 even though it was under roof by June 17, 1983. The "soft opening" took place April, 1984. Because the hotel is unique it took longer to complete than the office building which was completed, February 1984.

#### CONCLUSIONS OF LAW

It is well settled law Summary Judgment is an extreme remedy which is appropriate only when there are no material facts in issue and when it is clear that the moving party is entitled to judgment as a matter of law. Spellman v. American Security, 504 A.2d 1119, 1122 (D.C. App. 1986). Here, both parties contend the case is ripe for decision on their cross-motions for summary judgment. The pleadings and accompanying affidavits reflect there are no material issues of fact in dispute. Accordingly, the Court has determined the issue in this case is one of law and justiciable on the motions before it. The sole issue is whether the District's "corrected allocation" constituted mere correction of an obvious mistake or a reassessment of the property at issue.

In 1776 K Street Associates, et al. v. District of Columbia, 446 A.2d 1114 (1982) the District of Columbia Court

of Appeals upheld the trial court's ruling that the District has authority to send corrected notices of assessment.

Petitioner argues however, 1776 K Street Associates et. al, should be strictly construed as only authorizing correction of allocations based on mere arithmetic or clerical errors.

On the authority of 1776 K Street Associates et. al, this Court held in Vogue Travel Inc. v. District of Columbia, Tax Docket 3449-84 (D.C. Super. Ct. May 17, 1985) that the District has authority to correct basic assessment errors which result from the Department's failure to be aware of the impact of the construction and completion of property upon a parcel of land. In addition, this Court further concluded in Vogue Travel that D.C. Code § 47-824 which specifically authorizes the District to send taxpayers notices of tax assessments, necessarily implies authorization to send corrected notices of assessment as well. Id.

The Court is persuaded the District had authority in the instant case to correct the obvious error made in the initial notice of assessment sent to petitioner. Thus, the District's corrected assessment sent on July 27, 1984 was lawful.

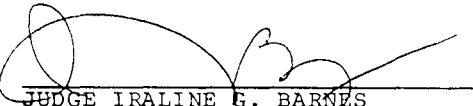
Unaware petitioner's hotel was located solely on lot 854 in square 37, the District erroneously treated it as a false vacancy accounting for the initial assessment of \$3,577,420 for the land, with no improvement value. This error was however uncovered when petitioner's own information supplied in separate cost schedules alerted the District of the existence of two separate buildings on lots 853 and 854 respectively. Based on this information, the District lawfully proceeded to correct the obvious error of not having assigned any improvement value to lot 854 wherein petitioner's hotel is located.

As in 1776 K Street Associates, et al, petitioner here does not contend the property value reflected in the corrected notice of assessment is wrong. Instead, petitioner maintains only that the District acted without authority because the corrected assessment reflects a change in which the assessor exercised judgment. In this Court's view however, where no assessment is made on the mistaken belief that a building does not exist or is treated as such on the belief that a building is located on two lots rather than one, correction of this kind of error does not reflect a change in which the assessor exercised judgment. This is a case where no assessment judgment was made in the first instance followed by the exercise of judgment upon discovery of an obvious error. The District was not only empowered to send the petitioner a corrected assessment, but was required to do so as mandated by law.

Accordingly, it is on this 19<sup>th</sup> day of May, 1987,

Ordered that respondent's Motion for Summary Judgment is hereby Granted; and it is

Further Ordered that petitioner's Motion for Summary Judgment is hereby Denied with prejudice.

  
JUDGE IRALINE G. BARNES

Copies to:

Gilbert Hahn, Jr., Esquire  
Janet L. Eveland, Esquire  
Amram & Hahn, P.C., Suite 1100  
1155 15th Street, N.W.  
Washington, D.C. 20005

Richard Amato, Esquire  
Assistant Corporation Counsel, D.C.  
1133 North Capitol Street, N.E., Room 238  
Washington, D.C. 20002

*Delores Jones*  
*General Office DC*

*R. Stanfield*  
*5-20/87*